Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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CASE NO. 85-2117

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1986

JOE L. ROBINSON,
Petitioner

vs.

ROBERT C. DAUGHERTY, et al,
Respondents

ON PETITION FOR APPEAL TO THE
UNITED STATES SIXTH CIRCUIT

REPLY BRIEF TO PETITION

FOR CERTIORARI

JOE L. ROBINSON
5208 Whaley Drive
Dayton, Ohio 45427
513/228-2550

QUESTION PRESENTED

Whether or not an injured worker can take his action to Federal Court when he is denied and cannot enforce his rights in state courts.

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STATEMENT OF THE CASE

Plaintiff-Appelllant, Joe L. Robinson (Petitioner) filed an application for worker;s compensation benefits through his attorney E. S. Galion because of an industrial injury which was denied.

Petitoner, himself, filed a notice of appeal to the Montgomery County Common Pleas Court. The complaint was scheduled for a jury trial on January 15, 1979, and were heard upon at a pre-trial conference on September 20, 1978, where both parties agreeded upon an out-of-court-settlement. Petitioner was order by the trial court to obtain an attorney to commence a settlement. Petitioner obtain several attorneys who failed to prosecute his case and failed to notify him, consequently, his case was dismissed for failure to prosecute on March 21, 1978.

Petitioner, in 1983, filed a notice of appeal to the court of appeals of

Montgomery County, Ohio. On August 9, 1983, they dismissed the case for the lack of a final appelable order (Appendix A-2). On September 5, 1983, the trial court issued another dismissal nunc pro tunc March 21, 1978 (Appendix D-1 Peti tion for Certiorari). Petiticner filed the second notice of appeal to the court of appeals of Montgomery County, Ohio, which was denied and affirmed the judg-ment of the trial court (Appendix C-7 Petition for Certiorari).

Petitioner filed a doscrimination charge in the United States District Court for the Southern District of Ohio. In a decision and entry in March 1985, they directed petitioner to file a second amended complaint within 20 days in which sufficient facts are alleged to support a claim of discrimination. Petitioner did, however, they dismissed the complaint for failure to state a claim upon which

relief could be granted (Appendix B-2 petition for certiorari). Petitioner appeal his case to the 6th Circuit Court of Appeals who affirmed the District Court dismissal lack of subject matter jurisdiction (Appendix A-3 Petition for certiorari).

ARGUMENT

I. THERE ARE SEVERAL SPECIAL AND IMPORTANT REASONS WHY THE COURT SHOULD EXERCISE ITS DISCRETION AND GRANT CERTIORARI.

Petitioner first attorney, E. S. Galion, filed his claim for worker's compensation which was denied, the attorney resigned. Petitioner filed a notice of appeal to the Montgomery County Common Pleas Court. On September 20, 1978, a pretrial conference was held and a jury-trial date had already been set for January 15, 1979. At the conference

petitioner was ordered by the trial court to obtain the service of an attorney to commence a settlement which had been agreeded upon by both parties. Petitioner obtain several attorneys as ordered by the court, the attorneys failed to prosecute the case or notify petitioner as to the state of the case. 7 AM Jur 2d. attorneys duties to his client, Gay v. Heller (CA5 Fla.) 252 fed 313, Langen v. Borkowsi 188 Wis. 277, 206 NW 181 43 ALR 622. An attorney has a duty to inform his client promptly of any new information important to him, including the implicit obligation to inform him of the attorneys failure to act at the time sufficiently to permit him to engage another attorny who can than take proper action on his behalf, Passanante v. Yormack, 138 N.J. Super 233 350 A2d 497. Petitioner was warned at the pre-trial conference by the trial court if he did not obtain the service of an attorney he

would not be allowed to represent himself for commencement of a settlement.

Following the dismissal, petitioner appeal his case to the court of appeals of Montgomery County, Ohio, who stated in their decision and entry, we are unable to find in the records of the Common Pleas Court any such order. The order or judgment is not shown on the docket of the common pleas court (Appendix A-1). On September 5, 1983, the trial court dismissed the case NUNC PRO TUNIC March 21, 1978 (Appendix D-1 petiton for certiorari), but the court of appeals on August 9, 1983, could not find the records on the docket where the case had been dismissed. According to Rule 17 of the Supreme Court there are conflicts in the decisions of the Common Pleas Court and the Court of Appeals.

Another reason why certiorari should be granted according to Rule 17 of the

Supreme Court, the district court dismissed the case on failure to state a claim upon which relief can be granted (Appendix B-2 petition for certiorari) and the Sixth Circuit affirmed the dismissal but dismissed the case on lack of subject matter jurisdiction (Appendix A-3 petition for certiorari), both courts has departed from the accepted and usual course of judicial proceedings.

II. PETITIONER COMPLIED WITH THE FEDERAL COURT AND STATED SEVERAL CAUSES OF ACTION.

Petitioner cited the fourteeneth amendment to the United States Constitution, in part ...due process of law; deny to any person within its jurisdiction the equal protection of the law. The first amendment, in pertinent parts... right to petition the Government for redress of grievances. The seventh amendment in pertinent... the right of trial by jury.

(page 3&4 Petition for Certiorari), 42 U.S.C. 1981, Equal rights under the law, 42 U.S.C. 1983, Civil rights for deprivation of rights, 28 U.S.C. 1443(1) 1964ed in parts...denied and cannot enforce in state courts a right under any law providing for the equal civil right of citizens of the United States or all of the persons within the jurisdiction thereof.

Petitioner was discriminated in state courts according to Title VII of the civil rights acts of 1964. He was denied and could not enforce his rights to self-representation or his rights to see his file. The court officials and the attorneys conspired against him.

The Sixth Circuit Court of Appeals stated it is elementary that "state action" must exist to support a claim under 42 U.S.C. 1983, Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 155 (1978). It is true that a private individual or

entity who conspires with state officials to deprive a citizen of his constitutional rights may be held accountable under Section 1983, Martin-Marietta Corp. v. Bendix Corp. 690 f 2d 558 (6th Cir. 1982. (A-3&4 petition for certiorari).

III. PETITIONER WERE DEPRIVED OF DUE PROCESS OF LAW.

In Link v. Wabash R. R., 370 U.S. 626 (1962), a case was dismissed because the attorney failed to show-up for a pre-trial conference. Chief Justice Warren argued that a client should be entitled to notice and a hearing before his lawsuit is dismissed because of something his lawyer has done. Petitioner prosecuted his case timely-wise until at the pre-trial conference where he was ordered by the trial court to obtain an attorney to commence settlement which had been agreed upon by the defendant, with a jury-trial date for January 15,

1979 pending.

Petitioner rights was violated. He was denied due process of law when he was ordered by the judge not to represent himself any further, as in Link v. Wabash R. R. supra, his attorneys failed to prosecute the case (commence settlement or jury trial). The case was dismiss by the same trial court judge who order him to obtain an attorney and refused him self-representation. The trial court judge dismissed the case for failure to prosecute, however, the court of appeal stated we are unable to find in the record of the common pleas court any such order (Appendix A-2), the case had never been dismiss on the docket.

CONCLUSION

Petitioner is a pro se litigant who had an industrial injury and appeal his case to the Courts of Ohio and the Federal Judiciary to remedy justice when the Ohio Industrial Commission denied his workers compensation claim. He was denied and could not enforce his rights in state courts. He was denied due process and equal protection of the law in Federal courts. Certiorari should be granted because the state and federal courts has departed from the accepted and usual course of judicial proceedings.

Respectfully submitted,

Joe L. Robinson

Petitioner

Robert B. Crew

2580 Kettering Tower

Dayton, Ohio 45423
Attorney for Respondent

APPENDIX

COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

No. CA 8387

JOE L. ROBINSON, Petitioner,

vs.

ROBERTY C. DAUGHERTY, et al.

(August 9, 1983)

PER CURIAM:

Appellee has moved to dismiss the appeal herein for the reason appellant has failed to file a timely notice of appeal. Appellee contends that appellant is appealing from an order dated November 18, 1979, which order apparently denied appellant's request for a vacation of the judgment of March 14, 1979. We are unable to find in the record of the Common Pleas Court any such order. The order or judgment is not shown on

the docket of the Common Pleas Court.

Accordingly, the motion of appellee is overruled. The appeal, however, is DISMISSED for the lack of a final appealable order.

James A Brogan, Presiding Judge,

Joseph D. Kerns, Judge, Herman J. Weber, Judge.

Respectfully submitted,

Joe L. Robinson
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the_____ _____day of August, 1986 three copies of the foregoing document were deposited in a United States mailbox, with first class postage pre-paid and served upon Robert B. Crew 2580 Kettering Tower, Dayton, Ohio 45423, attorney for Respondent.